IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE.

CRIMINAL APPLICATION NO. 3112 OF 1997

ALONGWITH

CRIMINAL APPLICATION NOS. 3113, 3114, 3115, 3117, 3120, 2856, 2857, 2859, 3363, 3355, 3365, 3356, 3357, 3367, 3359, 3360 and 3361.

Madhav G. Pradhan and ors ...Petitioner

versus

M/s. Jenson and Nicholsons
Finance Services Ltd & anr. ...Respondent.

...

Mr. S.V.Marwadi for the applicant in all 23 matters.

Shri A.M. Shringarpure APP for the State in Appln Nos. 3112, 2856, 3115, & 3359 of 1997.

Shri A.S.Shitole APP for State in Appln Nos. 2857, 3117, 3365 & 3360 of 1997

Shri R.S.Khadapkar APP for State in Appln Nos. 3113, 3355.3356 & 3361 of 1997.

Shri B.H.Mehta APP for State in Appln Nos. 2859, of 1997.

Shri D.R.More APP for State in Appln Nos. 3114, 3363 & 3357 of 1007.

Mrs. P.H.Kantharia APP for State in Appln Nos. 3120, & 3367 of 1997.

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CORAM; V.G. PALSHIKAR, J.

DTAED; 22ND JUNE, 2005.

P.C.

1. By these petitions, the petitioners who were at some point of time in their life, directors of Accused no.1

Company, M/s. Mrinal Dyeing & Manufacturing Company Ltd. This company issued several cheques payable to the complainant M/s. Jenson Nicholsons Financial Services Ltd. Several cheques were issued by the company to several other financial institutions or individuals or companies. The cheques by those persons in whose favour they were drawn were presented for encashment and were dishonoured. The concerned payee filed a complaint under section 138 of Negotiable Instrument Act against the accused no.1 company and its directors for prosecution and conviction under section 138 of N.I.Act.

2. The learned trial Magistrate issued process in all the cases. Issuance of the process in those cases is the subject matter of challenge in all these petitions. The main and basic contention of petitioners who were some point of time directors of the company is that they were not directly and substantially involved in the management of the company and are therefore not covered by the provisions of section 141 of the N.I.Act and consequently they are not liable to be prosecuted at all under section 138 of N.I.Act. Reliance was placed on a judgment of the Supreme Court of India reported in **2004 ALL MR (Cri) page 3170 (Monaben Ketanbhai Shah & anr. Vs. State of Gujarat & ors)** where the Supreme Court has observed as under:

" The primary responsibility is on the complainant to make necessary averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every partner knows about the transaction. The obligation of the appellants to prove that at the time the offence was committed, they were not incharge of and were not responsible to the firm for the conduct of the business of the firm, would arise only when first the complainant makes necessary averments in the complaint and establishes that fact".

3. According to the Supreme Court where the complaint is absent in relation to such requisite averments, no process should issue against such persons. Relying on this judgment the learned Single Judge of this court while deciding Criminal **W.P. 2185/04 (in Raj Kumar Agarwal Vs. Llyods Finance Ltd. & anr)** held by the order dated 21-12-2004 that in view of the ratio in the judgment of Monaben cited above, averments making out involvement of the accused as director of the company to

establish nexus between the action and the working of the director as such must find place in the complaint in order to substantiate that complaint and require issuance of process. The learned Judge has by a very detailed and well reasoned order observed that where such averments are lacking and nothing more than language of section is mentioned, no case for prosecution of directors are made out. In such circumstances process under sec. 138 read with 141 of N.I.Act is liable to be quashed. I am in respectful agreement with the view expressed by the learned Single Judge. In the present case such averments are lacking consequently the requirements of sec. 141 are not alleged. Therefore as has been constantly held by this court as also by the Supreme Court that even if the entire averments in the complaint are accepted as correct, no offence is made, no averments find place in the present complaint and therefore issuance of process in these cases was unwarranted to expose erstwhile directors unnecessary harassment of facing prosecution and consequently it can amount in this particular case to be the abuse to the process of law. It is therefore necessary in the interest of justice that these petitions are liable to be accepted and they are accordingly accepted. Hence the process issued in these cases are quashed. Petition accordingly disposed of.

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